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NONSMOKERS' RIGHTS ACT OF 1985

DECEMBER 12 (legislative day, DECEMBER 9), 1985.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 1937]

The Committee having had under consideration an original bill agrees to report favorably thereon and recommends that the bill do pass.

I. BACKGROUND AND STATEMENT

The purpose of the Non-Smokers' Rights Act of 1985, reported herein as an original bill, is to cause the establishment of designated smoking areas in all U.S. Government buildings. Predecessor legislation, S. 1440, was introduced by Senator Stevens for himself and Senators Goldwater, Hatch, Proxmire, and Matsunaga on July 16, 1985.

More than three dozen states and hundreds of municipalities across the country have designated smoking area policies in effect in public places; however, these ordinances do not extend to any Federal facilities. The purpose of this legislation is to protect nonsmoking Federal workers and visitors to Federal buildings from the irritation and potentially harmful effects of secondhand smoke.

This legislation and the state and local laws, have arisen in response to increasing medical and scientific evidence linking exposure to secondhand smoke and adverse health conditions such as allergies, respiratory illnesses, and increased incidences of smoking-related cancers. Secondhand smoke consists of sidestream smoke released into the air from the burning end of a cigarette, and mainstream smoke from the filtered or unfiltered tip of a cigarette or from the mouth of a smoker who has inhaled and released cigarette smoke. Secondhand smoking, also known as passive smok-

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ing or involuntary smoking, is the act of inhaling secondhand smoke by a nonsmoker.

It is important to note that this legislation accommodates the interests of smokers and non-smokers alike. It is not intended as a prohibitionist bill. Its fundamental purpose is to protect the health of those federal employees and visitors to federal buildings who choose not to smoke. In no way should this legislation be viewed as a precedent for governmental control of mores or lifestyles. Any inconvenience caused to those who would like to smoke should be kept to a minimum necessary to protect adequately the health of those who choose to avoid such health risks.

It is claimed that policies to protect non-smokers from exposure to tobacco smoke in the workplace are unnecessary because common courtesy is sufficient to handle the concerns on non-smokers who wish to avoid the health risks posed by passive smoking. The Committee has found otherwise. Moreover, it appears that the simple placement of a "no smoking" sign successfully discourages smoking in that designated area, even if no immediate enforcement mechanism is apparent. The Committee is aware of a Gallup poll recently released by the American Lung Association which questioned adults about their attitudes towards smoking. The survey results indicated that 75% of all adults, smokers and nonsmokers, believe smokers should refrain from smoking in front of nonsmokers; 79% of all adults believe smokers should be assigned to special smoking areas if they wish to smoke at work [1]. The Committee believes that the Non-Smokers' Rights Act of 1985 is compatible with this public support for policies which would limit the exposure of non-smokers to secondhand tobacco smoke.

II. MEDICAL EVIDENCE

The hazards of smoking tobacco are well known and amply documented in scientific literature. While the dangers posed to nonsmokers by tobacco smoke have not been studied as extensively as the dangers posed to smokers, literature on the hazards to nonsmokers has accumulated for almost ten years, and the Surgeon General of the United States has stated that more than adequate medical evidence exists to support reasonable and sensible protection for the nonsmoker from the irritation and potential harm caused by secondhand smoke.

The Surgeon General's 1984 Report, *The Health Consequences of Smoking: Chronic Obstructive Lung Disease,* reported the following finding on passive smoking:

1. Cigarette smoke can make a significant, measurable contribution to the level of indoor air pollution at levels of smoking and ventilation that are common in the indoor environment.

2. Nonsmokers who report exposure to environmental tobacco smoke have higher levels of urinary continine, a metabolite of nicotine, than those who do not report such exposure.

3. Cigarette smoke in the air can produce an increase in both subjective and objective measures of eye irritation. Further, some studies suggest that high levels of involuntary smoke exposure

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Footnotes follow at end of report.

might produce small changes in pulmonary function in normal subjects.

4. The children of smoking parents have an increased prevalence of reported respiratory symptoms, and have an increased frequency of bronchitis and pneumonia early in life.

5. The children of smoking parents appear to have measurable but small differences in tests of pulmonary function when compared with children of nonsmoking parents. The significance of this finding to the future development of lung disease is unknown.

6. Two studies have reported differences in measures of lung function in older populations between subjects chronically exposed to involuntary smoking and those who were not. This difference was not found in a younger and possibly less exposed population.

7. The limited existing data yield conflicting results concerning the relationship between passive smoke exposure and pulmonary function changes in patients with asthma.

The Committee notes that sidestream smoke released into a room contains gases and particles in much higher concentrations than those found in mainstream smoke. The Surgeon General's 1984 Report stated, for example, that the strength ratio for elements in sidestream compared to mainstream smoke was 2.5 for carbon monoxide; 3.1 for methane; 73.0 for ammonia; 1.3 for tar; and 2.7 for nicotine. A 1981 report on indoor pollution issued by the National Academy of Sciences states that "For many people, the main or sole exposure to numerous gaseous and particulate compounds results from passive exposure to tobacco smoke" and that "smoking is the major source of indoor particles. . . ."

Studies by Aronow (1978), White and Froeb (1980), Hirayama (1981), Trichopoulos (1981) and Correa (1983) all provide significant evidence that tobacco smoke is hazardous to nonsmokers [2]. The Surgeon General's 1984 report found moreover, after examining a lengthy list of studies on the chronic respiratory symptoms of the children of smokers, that "a consistent finding in all reported data is an increase in symptoms with an increased number of smoking parents in the home."

Based on such evidence, the Committee concludes that a sufficient basis exists to justify reasonable restrictions on smoking in buildings under the control of the Federal Government.

III. HEARINGS

Three days of hearings on S. 1440 took place on September 30 through October 2, 1985. Witnesses at the hearings included former Secretary of HEW Joseph Califano, Surgeon General C. Everett Koop, Administrator Terence Golden of GSA, and representatives from the scientific and medical community, local non-smoker rights advocacy groups, the Tobacco Institute, the American Medical Association, the Coalition on Smoking OR Health consisting of the American Lung Association, the American Heart Association, and the American Cancer Society, a veterans group, and a Federal employee union local. Testimony before the Subcommittee on Civil Service, Post Office, and General Services focused on the health effects of passive smoking, economic cost/benefit analysis of smoking

in the workplace and of smoking policies in the workplace, and the implementation of designated area smoking policies.

IV. MAJOR PROVISIONS

The Non-Smokers' Rights Act of 1985, as reported by the Committee, authorizes the Administrator of General Services and the heads of agencies or departments with facilities not under the jurisdiction of GSA, including the Postal Service, to promulgate rules and regulations and provide for the implementation of designated smoking area policies in all facilities under their control, including leased space. Similar authority is given to the Committee on Rules and Administration of the Senate and the Committee on House Administration, as well as to the Administrator of the United States Courts. The bill does not detail what these policies must be; rather, it sets broad parameters (reasonable accommodation of both smokers and non-smokers within existing facilities) for the designation of smoking areas in order to ensure the flexibility which will be needed to implement the concept on an agency by agency basis.

The bill also requires consultation by affected institutions and agencies with the Surgeon General during the development of the mandated rules and regulations, and requires consultation with affected employee unions prior to implementation within a given agency of the designated smoking area rules. In addition, the rules and regulations promulgated by GSA and the other authorized entities must be published in the Federal Register for the purpose of informing the public.

Any costs associated with implementing the designated smoking areas rules developed pursuant to this Act shall be absorbed by the individual Federal agency or entity, including the Postal Service, responsible for implementing said rules. Sections 4(a)(2), 4(b)(1), 4(b)(2)(B), 5, and 6 define those entities responsible for implementing the designated smoking area rules.

V. SECTION-BY-SECTION ANALYSIS

The Committee has reported an original bill, the content of which is the same as was proposed in a Committee substitute.

Section 1 provides that the Act be cited as the "Non-Smokers' Right Act of 1985".

Section 2 makes Congressional findings relating to the proven health hazards of exposure to secondhand smoke, court decisions supporting employees' right to smoke-free work environments, and the costs of smoking to employers.

Section 3 provides for the designation of smoking areas in all U.S. Government buildings within 180 days of enactment of the Act, except as provided in section 4(b).

Section 4(a)(1) requires the Administrator of General Services to prescribe reasonable rules and regulations for the designation of smoking areas in public buildings as defined in the Public Buildings Act of 1959, including leased space. The Administration must also provide for the implementation of these rules and regulations, meaning that the Administrator is responsible for monitoring the implementation of the designated smoking area rules in the buildings under GSA's jurisdiction. However, the Administrator must

also ensure that the individual agency heads responsible for implementing the rules and regulations as provided for in section 4(a)(2) have the necessary latitude to adapt these rules and regulations to fit the particular circumstances of each agency.

Section 4(a)(2) provides that the head of each agency or department with jurisdiction over the buildings that fall under GSA's authority as provided by section 4(a)(1) shall be responsible for implementing the rules and regulation prescribed by the Administrator of General Services.

Section 4(b)(1) provides that no later than 180 days after the Administrator of General Services prescribes the rules and regulations pursuant to section 4(a)(1), the head of those departments or agencies, including the Postal Service, with jurisdiction or control of buildings not described in subsection (a) shall prescribe and provide for the implementation of reasonable rules and regulations to designate smoking areas in the buildings under such agency or department head's jurisdiction, including leased space. Similar to the authority granted to the Administrator of General Services under section 4(a)(1), these agency or department heads must monitor the implementation of the smoking area policy in the buildings under their control, while ensuring that the needed flexibility to adapt the policies to particular circumstances is apparent in the rules and regulations.

Section 4(b)(2)(A) requires that the rules and regulations prescribed under the preceding subsection be consistent with the policies reflected in rules and regulations prescribed by the Administrator of General Services, except as provided for in the following subsection.

Section 4(b)(2)(B) provides that the head of an agency or department as identified in subsection (b)(1) may adopt smoking area rules that are inconsistent with those prescribed by the Administrator of General Services if such agency or department head submits a written determination to the Surgeon General and the Administrator which specifies why rules and regulations consistent with those prescribed by GSA would interfere with the statutory mission of such agency or department. This subsection addresses concerns expressed to the Committee by the Senate and House Veterans Affairs Committees, veterans organizations, the Postal Service, and the Tennessee Valley Authority relating to certain agencies' special statutory status and mission.

Section 5 provides that the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives shall prescribe and implement reasonable rules and regulations to designate smoking areas in buildings under the jurisdiction of Congress, including leased space.

Section 6 provides for the Administrator of the United States Courts to prescribe and implement reasonable rules and regulations to designate smoking areas in all buildings under the jurisdiction of the judicial branch, including leased space.

Section 7 outlines basic requirements of the rules and regulations to be prescribed pursuant to the Act. These requirements apply to any and all entities authorized under the Act to prescribe designated smoking area rules and regulations or to implement them, or both.

Subsection 7(a)1 requires consultation with the Surgeon General. This is to ensure that the smoking area rules and regulations in each branch and agency of the Government are based on the same information concerning the health effects of passive smoking and the reasonable measures that can be taken to limit employees' exposure to secondhand smoke.

Section 7(a)(2) requires that the affected employee union(s) within each agency be consulted about the implementation of the designated area rules and regulations prior to their implementation. Given that implementation of the rules and regulations is on an agency by agency basis, with this provision the Committee intends that at a minimum, employee unions be consulted so that this new effort to protect the health of employees is acceptable to both management and labor. In addition, if any applicable collective bargaining agreement requires more than consultation for the purposes of effecting this kind of policy, the Committee does not intend that such an agreement be abrogated. However, the Committee does not intend that unions be able to veto plans to designate smoking areas; rather, the Committee envisions that the designation of smoking areas will be a cooperative effort of management and labor during which the needs and concerns of all affected employees will be considered.

Section 7(a)(3) requires that reasonable accommodations be made for both smokers and non-smokers who use U.S. Government buildings. The Committee does not intend that this Act in any way contribute to the denigration of those who choose to smoke; however, in reporting this bill the Committee is acknowledging that non-smokers have the right to be protected from exposure to other people's smoke to the maximum extent possible, and that it is incumbent upon the Federal Government as an employer to take steps to protect employees from such a health hazard.

Section 7(a)(4) requires that signs designating the smoking and non-smoking portions of buildings be conspicuously displayed. This might include signs that explain a policy governing an entire building, such as statements that non-smoking is the rule except where smoking is explicitly designated. However, when unique architectural attributes, such as those of an historic building, dictate, the Committee intends that these signs be conspicuous but aesthetically appropriate.

Section 7(a)(5) requires that provision be made for the effective in-house enforcement of the prohibiton against smoking in non-smoking areas. The Committee considered, but rejected, the provision of civil or criminal sanctions enforceable through judicial proceedings.

Section 7(a)(6) requires that all rules and regulations prescribed pursuant to the Act be published in the Federal Register for the purpose of informing the public.

Section 7(b) requires that the smoking areas designated pursuant to the Act be so designated within existing facilities.

Section 7(c) provides that no rule or regulation prescribed pursuant to the Act shall supersede more stringent rules or regulations governing smoking in a government building. This provision is intended to protect the rules of individual agencies like the Indian

Health Service which choose to implement more restrictive smoking policies or ban smoking entirely.

Section 8 provides for an effective date of 180 days after enactment of this act.

VI. COMMITTEE ACTION

On November 19, 1985, a quorum being present, the Committee reported by voice vote an original bill, entitled the Non-Smokers' Rights Act of 1985, in lieu of S. 1440.

VII. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate "the regulatory impact which would be incurred in carrying out the bill."

The Non-Smokers' Rights Act of 1985 would require the promulgation of new rules to implement the law within the three branches of the Federal government. These rules would not create any additional regulation of activities in the private sector or impose any new recordkeeping or reporting requirements on any segment of the public. The bill would, however, require those members of the public using Federal government buildings to abide by the smoking regulations in effect within a given building.

VIII. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 10, 1985.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared a revised cost estimate for an original bill to restrict smoking to designated areas in all United States Government buildings, as ordered reported by the Senate Committee on Governmental Affairs, November 19, 1985. This estimate supersedes the previous one dated December 6, 1985, and reflects additional information as to the categories of federal buildings that would be covered by the bill.

The bill would require the heads of agencies with jurisdiction over buildings in the executive, legislative, and judicial branches of the federal government to prescribe and implement rules and to post signs designating smoking areas in public buildings, including leased space. Because both the number of buildings that would require signs and the number of signs necessary for each building would depend on the rules prescribed pursuant to the bill, we cannot precisely estimate the total additional outlays that would result if the bill were enacted. However, based on information from the General Services Administration and other agencies, we estimate that at least 17,000 buildings would be affected and that it would cost at least $500 to post a set of signs in each building. Thus, total costs are likely to be at least $8.5 million. Assuming the

bill is enacted early in 1986, the additional outlays would occur in fiscal year 1986 or 1987. We do not expect the bill to require significant physical modifications of existing public buildings.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

IX. CHANGES IN EXISTING LAW

In accordance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee reports that there are no changes in existing law made by the reported bill.

Footnote 1:

SURVEY OF ATTITUDES TOWARDS SMOKING

Survey by the Gallup Organization, Inc.

Source: American Lung Association

Should smokers refrain from smoking in the presence of nonsmokers?

Current smokers, 62% agree; nonsmokers, 85% agree; former smokers, 78% agree; and all adults, 75% agree.

Should companies have a policy on smoking at work?

Current smokers, 76% support assigned areas for smoking; nonsmokers, 80% support assigned areas for smoking; former smokers, 80% support assigned areas for smoking; and all adults, 79% support assigned areas for smoking.

SUMMARY OF RESULTS OF THE JULY 1985 SURVEY CONDUCTED BY THE GALLUP ORGANIZATION "SURVEY OF ATTITUDES TOWARDS SMOKING"

1. SHOULD SMOKERS REFRAIN FROM SMOKING IN THE PRESENCE OF NONSMOKERS?

[In percent]

	Agree		Disagree		No opinion	
	1983	1985	1983	1985	1983	1985
Current smokers	55	62	39	37	6	1
Nonsmokers	82	85	14	15	4	0
Former smokers	70	78	22	22	8	(1)
All Adults	69	75	25	24	6	1

[1] Less than ½ of 1 percent.

2. SHOULD COMPANIES HAVE A POLICY ON SMOKING AT WORK?

[In percent]

	Assign certain areas for smoking	Totally ban smoking at work	No company policy	No opinion
Current smokers	76	4	19	1
Nonsmokers	80	12	6	2
Former smokers	80	9	10	1
All adults	79	8	12	1

3. WHERE SHOULD SMOKERS REFRAIN FROM SMOKING WHEN NONSMOKERS ARE PRESENT?

[In percent]

	Assign certain areas for smoking	Totally ban smoking at work	No company policy	No opinion
In a public place		62		
At work		34		
At home		19		
No opinion		2		

4. IS SMOKING HARMFUL TO YOUR HEALTH?

[In percent]

	Agree		Disagree		No opinion	
	1983	1985	1983	1985	1983	1985
All respondents	92	94	5	4	3	2

Footnote (2):

Aronow, "Effects of Passive Smoking on Angina Pectoris", 299 New Eng. J. Med. 21 (1978).

White and Froeb, "Small Airways Dysfunction in Nonsmokers Chronically Exposed to Tobacco Smoke", 302 New Eng. J. Med. 720 (1980).

Hirayama, "Non-Smoking Wives of Heavy Smokers Have a Higher Risk of Lung Cancer", 282 Brit. Med. J. 183 (1981).

Trichopoulos, D., A. Kalandidi, L. Sparrows, B. MacMahon "Lung Cancer and Passive Smoking" 27 International Journal of Cancer 1-4 (1981).

Correa, P., L.W. Pickle, E. Fontham, Y. Lin, W. Haenszel "Passive Smoking and Lung Cancer", Lancet ii (1983): 595-97.

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